

Clerk's Office
Filed Date: 4/27/22

U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
BROOKLYN OFFICE

April 24, 2022

Delivery via US Mail

The Honorable Margo K. Brodie
United States District Court for the
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

re: U.S.A. v. Wilburn, no. 19-CR-108

Dear Chief Judge Brodie:

The defendant, Andre Wilburn, respectfully "request[s] notice of the government's intent to use (in its evidence-in-chief at trial) any evidence that the defendant may be entitled to discover under Rule 16," pursuant to Rule 12(b)(4)(B) of the Federal Rules of Criminal Procedure. see *United States v. White*, 489 F. Supp. 3d 274, 280 (SDNY 2020) (discussing Rule 12(b)(4)(B)).

It's worth noting that an "open file" discovery policy, alone, will not satisfy Rule 12(b)(4)'s notice requirement "because it does not specify which evidence the government intends to use at trial." *United States v. Brock*, 863 F. Supp. 851, 868 (E.D.W.V. 1994), aff'd, 82 F.3d 1370 (7th Cir. 1996). Moreover, the government's violation of Rule 12(b)(4) will excuse the defendant's failure to move to suppress evidence prior to trial as required under Rule 6(b)(3), since the defendant would have no incentive to move to suppress evidence that the

government will not be introducing. United States v. Koschtschuk, 2010 US Dist. LEXIS 13105 (WDM Feb. 16, 2010) (citing United States v. de la Cruz-Paulino, 61 F.3d 986 (1st Cir. 1995)).

Therefore the defendant respectfully requests the government's intent to use evidence-in-chief at trial as per Fed R. Crim. P. 12(b)(4)(B).

Respectfully submitted,



Andre Wilburn # 73608-298

MDC Brooklyn

PO Box 329002

Brooklyn, NY 11232

Certificate of Service

I hereby certify that I have on this 24th day of April, 2022 served a copy of the foregoing upon counsel for the government, Eric W. Silverberg, by United States mail, first-class postage paid.

Andre Wilburn #73408008
MDC Brooklyn
PO Box 309002
Brooklyn NY 11202

The Honorable Margo K. Brodie
United States District Court for the
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

11201-103299

